Brooklyn Borough Gas Co., 18 State Dept. Rep. (N. Y.) 70, 86; *contra, Public Service Commission* v. *Brooklyn Borough Gas Co.*, 104 Misc. 315, 171 N. Y. Supp. 937. The *dictum* in the principal case that the court will fix rates cannot be supported. *Bronx Gas & Electric Co.* v. *Public Service Commission*, 108 Misc. 180, 178 N. Y. Supp. 172; see *Bronx Gas & Electric Co.* v. *Public Service Commission*, 190 App. Div. 13, 20, 180 N. Y. Supp. 38, 44. And the ingenious decree of Judge Learned Hand in a similar situation impounding the excess above the invalid statutory maximum to be distributed retroactively according to the new rate to be fixed by the legislature depends of necessity on early legislative action. See *Consolidated Gas Co.* v. *Newton*, 267 Fed. 231, 270. The case commonly relied on by the court as laying down this narrow construction dealt with a rate which no court had found confiscatory. *People ex rel. Municipal Gas Co.* v. *Public Service Commission*, 224 N. Y. 156, 120 N. E. 132. See *Public Service Commission* v. *Brooklyn Borough Gas Co.*, 104 Misc. 315, 328, 171 N. Y. Supp. 937, 944. The more reasonable interpretation of the words of the act as fortified by its whole scheme and purpose would confer a general power of rate regulation subject to a limitation by statute. Then when the limitation is invalid as to any company the commission could still fix reasonable rates for that company under its general power. See *Bronx Gas & Electric Co.* v. *Public Service Commission*, 190 App. Div. 13, 21, 180 N. Y. Supp. 38, 45; *Matter of Brooklyn Borough Gas Co.*, 18 State Dept. Rep. (N. Y.) 70, 83.

SURETYSHIP — SURETY'S DEFENSES — ALTERATION OF SURETY'S CONTRACT BY AMENDING CAUSE OF ACTION. — The plaintiff sued X and the defendant and attached X's property. X gave a bond for the release of the attachment, on which the defendant became surety for the amount of the judgment in case plaintiff recovered "in said action." Plaintiff in fact had no cause of action against X but was the agent of the Y company which did. With X's consent the Y company assigned its claim to plaintiff. Defendant consented to the assignment "without prejudice to any rights against plaintiff." Plaintiff recovered judgment and now sues the defendant as surety on his bond. *Held*, that the defendant is released. *Michelin Tire Co.* v. *Bentel*, 193 Pac. 770 (Cal.).

It is a fundamental proposition that any material variation of a surety's obligation without his consent discharges him. This principle is applicable to sureties on a bond given to release an attachment. If the plaintiff discontinues as to certain defendants while recovering against the others, or if parties plaintiff are added or eliminated in such a way as essentially to alter the surety's liability, he is released. *Andre* v. *Fitzhugh*, 18 Mich. 93; *Furness* v. *Read*, 63 Md. 1; *Quillen* v. *Arnold*, 12 Nev. 234. And if, as in the principal case, the plaintiff substantially amends his cause of action, substituting a good for a bad one, the surety's liability ceases. *Cassidy* v. *Saline Bank*, 7 Ind. Terr. 543, 104 S. W. 829; *Wood* v. *Denny*, 7 Gray (Mass.), 540. But if the alteration is merely one of form, such as a correction of a misdescription of claim, the obligation of the surety continues binding. *Morton* v. *Shaw*, 190 Mass. 554, 77 N. E. 633; *Warren Bros.* v. *Kendrick & Roberts*, 113 Md. 603, 77 Atl. 847. Should the sureties consent to the alteration they are not discharged. *Hellman* v. *City Trust Co.*, 111 App. Div. 879, 98 N. Y. Supp. 51; *Mundy* v. *Stevens*, 61 Fed. 77. The fact that the defendant in the principal case assented to the amended action "without prejudice to any rights" tends to support the court's finding that the consent bound him only as a party in the original suit and did not prevent him from setting up the defense of alteration of his suretyship obligation.

TITLE, OWNERSHIP AND POSSESSION — CHATTELS — RIGHTS OF ADVERSE HOLDER — BANKRUPTCY. — X bought, in good faith, a stolen automobile.